



The nature and extent of claimant's disability is the only issue raised for the Board's review.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated by the ALJ in his Award. The 14 percent rating by Dr. Horton is more consistent with the evidence. Dr. Delgado's rating places a greater reliance on claimant's subjective complaints. The credibility of those subjective complaints were impeached by the videotapes. Claimant's activities on the videotapes were in marked contrast to her testimony.

The Board further affirms the ALJ's finding that claimant retains the ability to earn a wage comparable to the average weekly wage she was earning at the time of her injury. This is supported by the opinions of the vocational experts when applying the medical restrictions. Only when claimant's subjective complaints and self-imposed limitations were considered did those opinions change. Even Dr. Delgado said claimant could work a full eight hour day, alternating sitting and standing every hour. No doctor agreed with claimant's contention that she must be able to lie down at work, and no doctor restricted claimant to a wheelchair.

Because claimant returned to work for respondent in an accommodated job at a comparable wage, there is a presumption of no work disability.<sup>2</sup> After leaving that job claimant failed to make a good faith effort to find appropriate employment. Accordingly, her wage earning ability should be imputed.<sup>3</sup> Claimant retains the ability to earn a comparable wage. The presumption of no work disability, therefore, has not been overcome.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bryce D. Benedict dated October 6, 1999, should be, and is hereby, affirmed.

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<sup>2</sup> K.S.A. 1992 Supp. 44-510e(a).

<sup>3</sup> Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2000.

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BOARD MEMBER

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c: Gregory J. Bien, Topeka, KS  
Karen D. Pendland, Kansas City, MO  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director